

**Idaho Board of Health and Welfare  
Minutes**

**November 9 & 10, 2005**

The Board of Health and Welfare convened at:

Pete T. Cenarrusa Building  
450 W. State Street, 10<sup>th</sup> Floor CR  
Boise, Idaho

**CALL TO ORDER**

Chairman Kenyon called the meeting to order at 8:05 am.

**ROLL CALL**

Janet Penfold, Secretary, called the roll.

**Board Members Present:**

Quane Kenyon, Chairman  
Janet Penfold, Secretary  
Dr. Richard Roberge, Member  
Stephen Weeg, Member  
Dan Fuchs, Member

**Ex-Officio Members Excused:**

Senator Dick Compton  
Representative Sharon Block

**Department of Health and Welfare Staff Present:**

Karl Kurtz, Director  
Joe Brunson, Deputy Director  
Dave Butler, Deputy Director  
Bill Walker, Deputy Director  
Jeanne Goodenough, DAG  
Martha Puett, Director's Office  
Sherri Kovach, Administrative Procedures  
Tom Shanahan, Public Information  
Dick Schultz, Health  
Ken Deibert, FACS  
Dr. Leslie Tengelsen, Health  
Chuck Halligan, FACS  
Cameron Gilliland, FACS  
Pharis Stanger, FACS  
Randy May, Medicaid

Dia Gainor, Health  
Tracy Farnsworth, SHS  
Margo Miller, Director's Office  
Mary Jones, FACS  
Susan Dwello, FACS  
Ike Gayfield, Medicaid  
Bev Barr, APS  
Lori Yellen, FACS  
Chris Hahn, Heath  
Sherry Johnson, FACS  
Paul Leary, Medicaid  
David Simmitt, Medicaid  
Debby Ransom, Medicaid  
Kathleen Allyn, Region IV  
Robert Bourassa, SHN

**Others Present:**

Paul Headlee, Office of Performance Evaluations  
Keith Fletcher, Ashley Manor

Kelly Keele, IADDA  
Bryan Elliot, IDALA

Gary May, Ashley Manor  
Kristina Rice, DDA  
Ron Enright, DDA  
Lori Rainboth, A & R Case Manager  
Jennifer, Murdoch, A & R, Case Manager

Scott Burpee, Valley Vista  
Robert Vande Mere, IHCA  
Kris Ellis, IADDA

### **PUBLIC COMMENT PERIOD**

Gary May, Ashley Manor, expressed concern regarding Medicaid Information Release MA05-32 and Medicaid Information Release 2005-29, related to the collection of the client contribution and the prior authorization criteria for Alzheimer's drug class, respectively. Mr. May stated his facility is not receiving these information releases on a timely basis and there is a potential for serious problems to his clients and facility. Mr. May further stated that he pulled this particular information off the Internet today.

Mr. Fuchs, Board member who is also a pharmacist, stated he is perplexed that Mr. May has not received the information related to medications as this is routed months in advance. Someone in Mr. May's agency should be monitoring the Medicaid website and keeping up to speed on this.

Randy May, Deputy Administrator, Medicaid, stated he will work closely with Mr. May and Mr. Fletcher to ensure they personally receive the notices; also, he will ensure that all the residential and assisted living facilities are included in Medicaid's distribution list.

### **AGENDA ITEM #1: APPROVAL OF BOARD MINUTES**

Chairman Kenyon presented the minutes of the August 12, 2005 meeting for adoption.

**Motion:** Dr. Roberge moved for approval of the minutes of the August 12, 2005 Board Meeting.

**Second:** Janet Penfold

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

### **AGENDA ITEM #2: DIRECTOR'S REPORT**

Director Kurtz thanked the Board members for their commitment to the Department and for the Board members for being here today. Director Kurtz also stated that he personally appreciated the Board's support and assistance to the Department. Director Kurtz reported on the following:

- The status of the two board member vacancies – Dr. Riggs resigned as of October 2005 and the candidate from Region 2, which had been identified earlier in the year, has made other commitments to two other boards and therefore cannot commit to the Board of Health and Welfare. The Governor's Office has requested the Department take over the process and Director Kurtz has already made contact with various Legislators in both regions to solicit names for review. The Department hopes to have those names by next week and will submit

to the Governor for his approval and appointment.

- The Department submitted its preliminary budget to Governor Kempthorne and the Legislative Office, and to date have been working through various iterations of the budget. The Governor must take the Department's and the other state agencies' budgets and develop recommendations for the Legislature. Some of the Department's request include: funding for adult mental health – expansion of some of the ACT teams; additional support for the provision of mental health services – expansion at State Hospital North (additional beds are needed); review of community hospitals – patients are currently on admissions wait lists.

The number one Department budget priority is employee compensation as it has been 3 - 4 years since money has been available in terms of employee compensation. Critical positions, i.e., nurses, pharmacists, clinicians, etc., are out of market range and the Department is hiring new employees at a higher salary than what current staff is paid. Medicaid continues expansion both in terms of its health delivery system and increased enrollment; this year enrollment increased by 5 – 7%. Additional impacts in Medicaid program will be seen with the implementation of Medicare Part D.

Also included in the budget request is the replacement of some of Department information systems, i.e., MMIS, EPICS, document imaging, and electronic health record.

- The Office of Performance Evaluations has begun a management study of the Department, which includes the role of the Board. The report and recommendations will be presented to Legislature in mid February 2006.

The Office of Performance Evaluations will also be releasing its preliminary report on substance abuse and treatment at the Joint Legislative Oversight Committee meeting in December.

- Governor Kempthorne directed the Department to review the Medicaid program and determine how the program could better serve the needs of Idahoans who require assistance from the state. Over the last four months, Department and Governor's Office staff have worked on this process and have recommended significant changes to the program. Eligibility is being addressed – what are the needs of clients; policy goals are being established around the populations in need; in short, modifying benefits to meet the identified needs. Director Kurtz, David Rogers and Governor Kempthorne met with Health and Human Services Secretary Michael Leavitt to review the draft concept paper. Secretary Leavitt was very supportive of the concept paper and requested it be fine-tuned. The Governor's Office will issue a press release in the near future regarding Medicaid reform. The time frame is pretty aggressive as Governor Kempthorne has targeted July 1, 2006 as the kickoff to the new program. The concepts are being reviewed with the Centers for Medicare and Medicaid Services and waivers will have to be issued.
- In October the Department hosted a meeting of the Senate and House Germane Committees to bring Legislators up to date on various issues, which will be discussed in depth at the upcoming session.

- Service Integration implementation continues with the roll out in Regions 5 and 7; the other four regions are working on respective plans and implementing parts of their plans as appropriate. Service Integration should be implemented statewide by the end of 2007.

**AGENDA ITEM #3: CONFIRMATION OF NEWLY APPOINTED REGIONAL DIRECTOR, REGION IV**

Bill Walker introduced Kathleen Allyn who has been with the Department for some time, first in Medicaid and recently as the Acting Regional Director in Region 5. Ms. Allyn stated she appreciated the opportunity to serve in a position to give back to the community. Ms. Allyn stated there are various issues to be addressed, is pleased with the appointment and looked forward to working in this capacity.

**Motion:** Stephen Weeg moved to confirm the appointment of Kathleen Allyn as Regional Director, Region IV, Department of Health & Welfare.

**Second:** Dan Fuchs

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #4: CONFIRMATION OF NEWLY APPOINTED ADMINISTRATOR, STATE HOSPITAL NORTH**

Ken Deibert introduced Robert Bourassa (Bob) who hails from Ft. Worth, Texas. Mr. Bourassa stated he is very pleased to be in Idaho and working with the fine folks at the facility. He is in the process of finalizing the hiring of a second psychiatrist, and looks forward to working with the Department and Board. Mr. Bourassa invited Board members and staff to visit the facility if they are in the area.

**Motion:** Dr. Roberge moved to confirm the appointment of Bob Bourassa as Administrator, State Hospital North, Department of Health & Welfare.

**Second:** Stephen Weeg

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #5: CONFIRMATION OF NEWLY APPOINTED ADMINISTRATOR, STATE HOSPITAL SOUTH**

Ken Deibert introduced Tracy Farnsworth who hails from Clovis, California. Mr. Farnsworth commented he has been at SHS for the last five months and has begun to integrate quite nicely with the hospital and community. He is thrilled at the opportunity to serve the state of Idaho and looks forward to a long tenure.

**Motion:** Stephen Weeg moved to confirm the appointment of Tracy Farnsworth as

the Administrator, State Hospital South, Department of Health & Welfare.

**Second:** Dan Fuchs

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #6:    UPDATE ON METHAMPHETAMINE CONCERNS**

Joe Brunson reported Dr. Parsons attended the last meeting and reported what he and other obstetricians are seeing in their respective practices, and across the Treasure Valley related to methamphetamine and other drug usage. Mr. Brunson reported that last year the legislature passed methamphetamine clean up rules and the Department is in the process of establishing standards for clean-up of meth homes/labs, etc., The drugs are coming in from Mexico and have been mainly a western states' problems; however, the drugs are making their way east across the country. Mr. Brunson reported he participates on the Criminal Justice Commission, which has made a number of recommendations to the Governor on how to deal with some of the issues related to drug usage. One of those includes the Safe Children's partnership, which is between the Department and the State Police – this is when the police enters a meth home/lab and takes children and places them in the custody of the Department. The Department then provides a medical evaluation and makes sure children are safe. At the 2006 Legislative session, Senator Darrington is expected to present legislation which directs medical providers to report pregnant women using drugs; those mothers would then be placed in rehab and treatment. Governor Kempthorne has requested a multi-entity approach to dealing with the cascading effects of the overwhelming drug problem, how to prevent some of these super labs from taking root, and in coordinating the work of police, health and human services, state agencies, and communities, etc.

Board members questioned if juveniles who are found in the homes of meth users/meth producers are automatically placed in foster care. Mr. Brunson responded that children are placed with a family member if one is available otherwise they are placed in foster care.

**AGENDA ITEM #7:    FOLLOW-UP ON MEDICARE MODERNIZATION ACT**

Randy May, Deputy Administrator, reported extensive work has been done internally within the Department and external partners such as other state agencies, community partners, physicians, etc., in preparation of the November 15 enrollment for the Medicare prescription drug program; actual coverage begins January 1, 2006. This coverage is available for all individuals who are entitled to Medicare Part A and/or enrolled in Medicare Part B. Mr. May explained that there are 50 prescription drug plans in Idaho with an average monthly premium of \$32.00 per month; that there will be cost sharing (co-pays and deductibles) based on plan and client income; and that 12 prescription drug plans will be targeted toward low income subsidy clients. Also, effective January 1, 2006, all dual eligibles (those covered by both Medicare and Medicaid) will have their drug coverage shifted to Medicare.

Approximately 194,000 Idahoan's are eligible for the Medicare drug program, which includes 148,000 who are above the 150% federal poverty limit, 29,000 who are below the 150% federal poverty limit, and 17,000 who are dual eligibles. Of concern to the Department are those folks

who fall below the federal poverty limit as they will also have the opportunity to apply for additional Department services i.e., food stamps, cash/medical assistance, etc.

Kathleen Allyn reported statewide organizations such as the Department of Health and Welfare, Idaho Commission on Aging, Idaho Department of Insurance, Department of Labor, Social Security Administration, Centers for Medicare and Medicaid Services, and the Idaho Congressional Office have been working over the last several months and have: 1) developed a region-by region approach building on the ground coalitions to help with outreach, client education, and enrollment; 2) partnered with providers (i.e., physicians, pharmacy waiting rooms, nursing homes, assisted living facilities) to disseminate information; 3) developed coordinated and consistent communications; and 4) established enrollment places close to where clients live. Ms. Allyn stated that the next four months will be extremely busy; however, there is a solid game plan and the right community partners are at the table. The group is committed to directing staff resources in multiple agencies and stakeholder organizations to help with the PDP selection and enrollment; also, the group will continue to refine and implement long term planning.

Board members asked the following questions: 1) are mobile vans available to service the rural areas and/or folks who may not be able travel; and 2) how is the Department addressing the needs of the folks who do not understand and/or speak English? Ms. Allyn stated that Region 5 has a van which will be used to target those rural areas in its region; and that the group has requested Meals on Wheels volunteers and nurse reviewers provide names of folks with limited English proficiency so appropriate arrangements can be made. Folks who show up at Department offices requesting assistance will not be turned away; staff will provide whatever assistance is necessary to ensure these folks get enrolled.

**AGENDA ITEM #8: BOARD OFFICERS**

Stephen Weeg reported the Nominating Committee recommended the following Board officers: Quane Kenyon, Chairman, Dr. Roberge, Vice Chair, and Janet Penfold as Secretary.

**Motion:** Stephen Weeg moved to elect the following Board officers:  
Quane Kenyon, Chairman, Dr. Roberge, Vice Chair, and  
Janet Penfold as Secretary.

**Second:** Dan Fuchs

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #9: BOARD DATES FOR 2006**

Martha Puett and Sherri Kovach reviewed the Board dates for 2006; there is no formal meeting scheduled in January. Board members are invited to attend the Department's budget presentations to the Joint Finance-Appropriations Committee meeting; Martha will apprise the Board when that date is confirmed.

**Motion:** Chairman Kenyon moved to approve the meeting dates for 2006.

**Second:** Dr. Roberge

The Board approved the following dates for 2006:

- January (when DHW presents budget to JFAC – not a mandatory meeting)
- May 19, 2006
- July 21, 2006
- November 16 & 17, 2006

**AGENDA ITEM #10: RULES GOVERNING CERTIFIED FAMILY HOMES  
DOCKET NO. 16-0319-0501 (REPEAL) (PENDING)**

Randy May, Deputy Administrator, Medicaid, reported this chapter of rules is being repealed to better serve Idaho's population of vulnerable adults living in certified family homes. The entire chapter of rules is being rewritten under Docket 16-0319-0502. Legislation adopted in 2005 made this chapter of rules out of alignment with statute changes. This chapter had requirements that were better suited for larger facilities and were not always appropriate for a certified family home serving one or two people.

**Motion:** Stephen Weeg moved that the Idaho Board of Health and Welfare adopt as pending, rules Governing Certified Family Homes as presented in the final proposal under Docket No. 16-0319-0501, with the rules becoming final and effective at the conclusion of the 2006 legislative session.

**Second:** Dan Fuchs

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #11: RULES GOVERNING CERTIFIED FAMILY HOMES  
DOCKET NO. 16-0319-0502 (RE-WRITE) (PENDING)**

Randy May, Deputy Administrator, Division of Medicaid, reported this chapter of rules is being re-written to better serve Idaho's population of vulnerable adults living in certified family homes that provide services in a safe, home-like environment. The rules being repealed had requirements suited for larger facilities and were not always appropriate for a family home. The repeal of this chapter was published under Docket 16-0319-0501. Legislation adopted in 2005 made this statute change for certified family homes. These rules are being adopted as temporary rules to align with statute changes that are effective July 1, 2005.

**Motion:** Dan Fuchs moved that the Idaho Board of Health and Welfare adopt as Pending, the rules Governing Certified Family Homes as presented in the final proposal under Docket No. 16-0319-0502, with the rules becoming final and effective at the conclusion of the 2006 legislative session.

**Second:** Janet Penfold

**Vote:** Motion carried. 5 Ayes 0 Nays 0 Absent

**AGENDA ITEM #12: RULES GOVERNING LICENSED RESIDENTIAL & ASSISTED LIVING FACILITIES – DOCKET NO. 16-0322-0501 (REPEAL) (PENDING)**

Randy May, Deputy Administrator, and Debby Ransom, Bureau Chief, Facility Standards, Medicaid, reported that this chapter of rules is being repealed to better serve Idaho's population of vulnerable adults living in residential or assisted living facilities. This entire chapter of rules is being re-written under Docket No. 16-0322-0502. Legislation adopted in 2005 made this chapter of rules out of alignment with statute. There were fees in the chapter that were repealed; in the new re-write of the chapter these fees have been carried over with no changes to them.

**Motion:** Stephen Weeg moved that the Idaho Board of Health and Welfare adopt as pending, the rules Governing Licensed Residential and Assisted Living Facilities in Idaho, as presented in the final proposal under Docket No. 16-0322-0501, with the rules becoming final and effective at the conclusion of the 2006 legislative session.

**Second:** Dr. Roberge

**Vote:** Motion carried. 5 Ayes 0 Nays 0 Absent

**AGENDA ITEM #13: RULES GOVERNING LICENSED RESIDENTIAL & ASSISTED LIVING FACILITIES – DOCKET NO. 16-0322-0502 (RE-WRITE) (PENDING)**

Randy May, Deputy Administrator, Medicaid, reported this chapter of rules is being re-written to better serve Idaho's population of vulnerable adults living in residential or assisted living facilities. The current chapter of rules is being repealed under Docket No. 16-0322-0501. Legislation adopted in 2005 made the current rules out of alignment with statute and this docket incorporates the changes necessary because of the changes to statute and the restructuring of these facilities as negotiated with industry and advocates. Fees are being transferred into the re-write of the chapter with no changes to the fee.

Mr. May reported the Department and stakeholders have been working since March trying to craft rules so there is balance of resident's needs with the business, safety and care of residents. There have been over 35 hours of negotiated rule making, the group has posted the changes on Websites as changes were made, with the final draft rules posted on the Website in August. Numerous efforts have been made to keep stakeholders informed and repeated efforts have been made to solicit their input. Unfortunately, have had basically no input back from most stakeholders, although the draft rules have been available for the last seven weeks on the Website; also other venues for public comment were provided. The rules were posted according to the IDAPA process on October 6, 2005, three hearing were conducted in Coeur d'Alene, Boise, and Pocatello with most of the comments received at the hearings being negative. Thus staff met again with stakeholders and walked back through the comments received, and incorporated wherever possible those comments that were feasible and realistic. The rules were



republished and it is the product before you for approval.

Brian Elliott, IDALA, testified in opposition to the rules and recommended the Board reject the rules as he has major concerns on the rules as presented. Mr. Elliot stated he felt the liability is being passed on to the providers and that the financial impact is great. He personally is no longer accepting Medicaid clients due to the financial liability. Also, he feels that resident choice is limited and that is a big issue for him.

Robert Vande Merwe, Director of the Idaho Health Care Association, testified in support of the rules. Mr. Vande Merwe reported stakeholders have been working with the Department over the last 18 months with this final product being the end goal. It has been a give and take process and everyone agrees bad providers must be held accountable. Exactly how to do that has been the hard part in the past and the new rules provide good guidelines. The group has had to find compromise that works for everyone; however, a good quality measurement system needs to be in place and enforced. One of the last compromises that was made related to the elimination of TB testing of clients and providers. Yes, this is a fairly costly process to the industry; however, Mr. Vande Merwe reluctantly agreed to this compromise as he felt TB testing should be conducted. Mr. Vande Merwe stated that many facilities are private pay only and this scenario will more than likely continue. In closing he stated he supports the rules as written and does not want to begin the process again.

Scott Burpee, CEO of Valley Vista Care Services, reported he was personally involved in writing the previous iterations of rules. He stated that it was hard to hear all the criticism of the current rules; however, understood that changes are needed. Mr. Burpee stated he supports the rules as written, which support good quality care, have measurements in place and hold facilities accountable. These rules are a huge improvement over what was in place before. One of the biggest complaints from the industry was that surveyors were catching providers off guard; and now core issues are clearly identified and clarified in the rules and administrators know exactly what they will be cited for if they are out of compliance. Also, the survey cycles have been changed to recognize the budget shortfalls the Department had. If you are a good provider, you can go a couple of years without a survey; if you are a poor provider, there will be more frequent surveys to get operations back to snuff. The current rules clarify the level of care which is to be provided residents living in residential and assisted living facilities. Mr. Burpee again reiterated he supported the rules and did not want to begin the lengthy process all over again.

Mr. May concluded by stating that he personally reviewed and evaluated each and every comment received, and that subsequently, Department staff met with the stakeholders and evaluated each comment to determine if those comments were reasonable or made sense. Some of the comments received were out of the scope of the Department and related to Board of Nursing and/or dealt with Idaho statute. The product that has been put forth accurately reflects the input and work done by the Department and the stakeholders who participated in this very lengthy process.

Board members expressed a strong bias towards the health and safety of folks in these homes and felt very strongly that rules are needed which protect this vulnerable population. Board members further stated that if administrators wish to operate these homes, they need to bite the bullet.

**Motion:** Dr. Roberge moved that the Idaho Board of Health and Welfare adopt as pending, the rules Governing Residential Care or Assisted Living Facilities in Idaho, as presented in the final proposal under Docket No. 16-0322-0502, with the rules becoming final and effective at the conclusion of the 2006 legislative session.

**Second:** Stephen Weeg

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #14: ADJOURNMENT**

Chairman Kenyon adjourned the meeting at 3:30 pm; the Board will convene again on November 10, 2005 at 8:00 a.m.

**Thursday, November 10, 2005**

Chairman Kenyon called the Board meeting to order at 8:10 am; Ms. Penfold called the roll and determined a quorum was present to conduct business.

**AGENDA ITEM #15: CONFIRMATION OF NEWLY APPOINTED REGIONAL DIRECTOR, REGION VII**

Bill Walker, Deputy Director, welcomed and introduced Tracey Sessions. Ms. Sessions has been acting Regional Director since August 2005 and has worked for the Department since 1998 in various programs: child protection, act team/mental health and mental health/DD programs. Ms. Sessions was recently awarded the Liberty Bell Award – this award is given by the Idaho Bar Association to a lay person in recognition of their contribution to Idaho law for establishment of the first mental health court in Region 7.

Ms. Sessions stated she is excited about the establishment of the mental health court and the service that it's providing to the communities, and that she looked forward to a long tenure in her position.

**Motion:** Stephen Weeg moved to confirm the appointment of Tracey Sessions as the Regional Director, Region 7, Department of Health & Welfare.

**Second:** Janet Penfold

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #16: UPDATE ON HEALTH DISTRICT'S CHARGE TO SCHOOLS FOR SECOND FOOD INSPECTION**

Dick Schultz, Administrator, Division of Health, reported that the District Health Departments are responsible for conducting the second inspection of school facilities and their food service programs. The State of Idaho requires one annual inspection, which carries a fee of \$65 per

inspection for everybody that participates. The basis for the fee was a shared approach for funding of the food program in the state of Idaho. The responsibility for conducting that second inspection was delegated to the respective health districts. Until a number of years ago, the funding was all local, ad-valorem, tax based and general fund distribution to the health districts; the Department did not provide any funds to perform the second inspection. The Department contracts with the health district to provide that service through the money that is receipted from the \$65 dollar fee. Recently, the federal Department of Agriculture a required second annual inspection for schools which participate in the reduced school lunch program. That second inspection is outside of the scope of the recommendations of the state. The health districts can always provide services above and beyond the current mandate and have the discretion to charge more. Some school districts have met with their respective health districts/Boards to negotiate reduced inspection rates; charges range from \$350 to \$5.00. The burden to request and/or renegotiate a reduced rate for the second inspection lies with the school districts.

**AGENDA ITEM #17: RULES GOVERNING EMERGENCY MEDICAL SERVICES –  
DOCKET NO. 16-0203-0501 (PENDING)**

Dia Gainor, Bureau Chief, Emergency Medical Service, Division of Health, reported that these rules implement HB 697 adopted by the 2004 Legislative session. The rules provide the structure for regulation of air medical response programs, including definitions, requirement for notifications and procedures for responding, and review of system data. A task force of 22 stakeholder organizations such as state agencies, associations, local representatives, instructors and tribal EMS, etc., met over a period of time and also conducted town hall meetings in July and August to assure that the rules would work.

Board members asked the following questions: 1) has a training curriculum already been developed and was there input/assistance from a University in the development; 2) how long is the training and do personnel need to travel for the training, or will that training be provided in one local area? Ms. Gainor responded that academic prepared educators will assist in the development of the training; training is approximately one to four hours long and the group will strive to develop a standard two hour training block. Air medical services staff will travel to the respective communities to provide training. Ms. Gainor also commented that Idaho has two dedicated EMS radio frequencies and all EMS agencies (ground and air) are required to carry radios with both frequencies.

**Motion:** Dan Fuchs moved that the Idaho Board of Health and Welfare adopt as pending, the rules Governing Emergency Medical Services, as presented in the final proposal under Docket No. 16-0203-0501, with the rules becoming final and effective at the conclusion of the 2006 legislative session.

**Second:** Dr. Roberge

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #18: RULES GOVERNING IDAHO REPORTABLE DISEASES –  
DOCKET NO. 16-0210-0501 (PENDING)**

Dr. Leslie Tengelsen, State Epidemiologist, reported that currently there are conflicts between the Idaho Reportable Disease rules and the newly re-written Idaho Food Code rules. The alignment of language between these chapters of rules eliminates possible sources of confusion for those who are using both chapters of rules to manage food employees with infectious disease, thereby reducing risk to the public from food-borne infections.

**Motion:** Dr. Roberge moved that the Idaho Board of Health and Welfare adopt as pending, the rules Governing Idaho Reportable Diseases, as presented in the final proposal under Docket No. 16-0210-0501, with the rules becoming final and effective at the conclusion of the 2006 legislative session.

**Second:** Dan Fuchs

**Vote:** Motion carried.          5 Ayes          0 Nays          0 Absent

**AGENDA ITEM #19: RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES  
DOCKET NO. 16-0411-0501 (REPEAL) (PENDING)**

Ken Deibert, Administrator, Family and Community Services, explained that the entire chapter is being repealed and re-written as the responsibility for licensure of developmental disabilities agencies was transferred about 1 ½ years ago from Family and Community Services to Medicaid. At that same time, Medicaid implemented the care management program for adults with developmental disabilities so there have been significant changes in the service delivery system for these populations, thus the need to re-write the chapter of rules.

**Motion:** Dr. Roberge moved that the Idaho Board of Health and Welfare adopt as pending, the rules Governing Developmental Disabilities Agencies, as presented in the final proposal under Docket No. 16-0411-0501, with the rules becoming final and effective at the conclusion of the 2006 legislative session.

**Second:** Dan Fuchs

**Vote:** Motion carried.          5 Ayes          0 Nays          0 Absent

**AGENDA ITEM #20: RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES  
DOCKET NO. 16-0411-0502 (RE-WRITE) (PENDING)**

Ken Deibert, Administrator, Family and Community Services, reported the entire chapter has been re-written to better assure that safe, high-quality developmental disabilities services are being delivered in an efficient manner to best meet the needs of people with developmental disabilities. The re-write aims to make the requirements, both for certification and providing

services, easier to understand and readily enforceable. This will improve compliance with the rules, reduce hearings, better assure the safety and quality of services, increase the efficiency of the system for providing services, and generally make the rules easier for staff and providers to use. More than a year of negotiated rulemaking was conducted in the development of these rules.

Cameron Gilliland, Program Manager, Developmental Disabilities, provided an overview of developmental disabilities agencies (DDA) and services. Mr. Gilliland explained that DDA services are therapeutic services designed to help individuals with developmental disabilities learn to live more independently and gain skills. Developmental disabilities services can take place in the community, home, or in a center and are widely available in Idaho. DDA's serve a wide variety of therapeutic needs and generally include developmental therapy, speech and hearing therapy, occupational and physical therapy, and psychotherapy. Some DDA's also provide pharmacological management, psychiatric diagnostic interview, community crisis supports and intensive behavioral interventions. Mr. Cameron stated that developmental therapy is the key DDA service, which is what the vast majority of all but a few agencies provide. Developmental therapy is defined in the new rules as therapeutic intervention and positive behavioral techniques that result in skill acquisition or prevent regression in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency.

Mr. Cameron reported that over the last five years the number of DDA licenses has doubled; in fiscal year 2000, there were 51 DDA's licensed, which served 4,075 individuals at a cost of \$26,025,359; and in fiscal year 2005, there were 105 DDA's licensed, which served 4,585 individuals at a cost of \$51,763,447. The amount of individuals during that time period grew by 510 or 13% while billings generated by the DDA's have dramatically escalated.

Mr. Gilliland reported that in 2001 a new service for children called intensive behavioral intervention (IBI) was created, and serves children with severe behavioral issues and severe delays in social and communication skills. IBI was created principally for children with autism but serves other children with other disabilities as well; IBI was designed to be a short-term service that helps children overcome maladaptive behaviors so they can participate in less intensive services. Ideally a child will access IBI for short periods of time as they deal with challenges. The child cannot receive IBI for more than 36 months; they can receive IBI for a few months, and then access other services for a time. When IBI is needed again, they can return to the service. IBI providers have to meet a higher educational and experiential standard; and reimbursement rate is twice the amount of developmental therapy. Currently about 500 children receive IBI services at a cost of over \$11,000,000 in fiscal year 2005. IBI also has the distinction of being the only major DDA service that is prior authorized for children. Language in the current DDA rules states that all DDA services for adults are to be prior authorized by the Department, but most services for children are not currently prior authorized by the Department.

Mr. Cameron reported that the process for DDA rule changes began approximately two years ago with the main purpose being that the rules were useful and enforceable. Monthly meetings were held with stakeholders representing parents, providers, advocates from Co-Ad, DD Council, IADDA, IPUL, parents and several subcommittees. This past summer public hearings

were held in Idaho Falls, Coeur d'Alene, and Boise to gather public input on the draft rules. As a result of the public comment, the Department made 18 pages worth of changes to the proposed rules. The rules have been around for many years and needed a major revision to consolidate and coordinate the number of minor revisions that have occurred over the years. The rules have not had a major re-write in eight (8) years and the rules also needed to reflect changes in what services DDA's can offer, and the changes to other programs serving individuals with developmental disabilities. Mr. Cameron gave a brief overview of the major changes: the rules are organized more efficiently; clarify required services; are updated to align with state, and federal laws and program and other Department rules. Also the following was added to the rules: IBI interpretive guidelines; requirement that DDA's must have a year of developmental therapy prior to delivering the optional services of IBI interventions; that all DDA's must deliver developmental therapy; more flexibility in progressive corrective actions; and that adults receiving DDA services through the A & D waiver, personal care services or nursing home must have an implementation plan authorized by the Department. Also, as a result of public comment the Department has added "marriage and family therapist interns" to the rule. Unfortunately, staff had to wait for a meeting of the Board of Marriage and Family Therapy to meet and give their recommendations so language adding the interns is not part of the propose rule; however, Mr. Gilliland requested the Board recommend the addition to the rule.

Mr. Gilliland closed by stating it was the responsibility of the Department to work in partnership with the DDA's to provide a continuum of services that are clinically competent and contain sound practices while being fiscally responsible. These rules represent an effort to fulfill the Department's responsibility in collaboration with stakeholders, families, advocates and providers. Mr. Gilliland requested the Board endorse the rules as presented.

Kelly Keele, Administrator, Transitions, Inc., testified against Docket No. 16-0411-0502; he stated the process has been good with most everything except for two piece. Mr. Keele acknowledged that the Association has DDA's around the state with many of those agencies operating in several regions. The Association has forwarded letters to all Board members detailing their concerns, which he will review. Mr. Keele stated that if they been allowed to come back to the table one more time, some of those issues would have been resolved. Issue number one deals with a type of psychotherapy that is called supportive counseling and is not insight clinical therapy. This is more problem solving, assertive training but is still more intensive than the developmental disabilities services provided by bachelor level social workers. The proposed rules eliminate this type of psychotherapy and the only therapy that would be allowed is clinical psychotherapy; Mr. Keele feels there is a need for both. Mr. Keele distributed a letter he received from David Rogers, which indicates there is a need for this type of psychotherapy and that Medicaid would begin the process of adding a professional-level services that meets the objective of supportive counseling as defined in the rules of the State Board of Social Work Examiners. Mr. Rogers further stated in his letter that the process would include making changes to the Department's administrative rules and that it could also require an amendment to the Medicaid State Plan. Mr. Keele stated that if supportive counseling is not included in the rules at this time, he would request to include a definition of supportive counseling as defined in the social work licensing rules, which can be done in one of two ways: as a separate service or a subtype of psychotherapy.

The second issue is that Sections 700 and 701 are core sections that describe services and how people get those services whether they are an adult or child. There are two types of plans, the individual support plan for adults or the individual program plan for children. Mr. Keele feels these sections are out of sync and contradict each other. Also, the requirement for signatures needs to be addressed in Section 700.02.b, page 240 ii. In closing Mr. Keele stated that with these corrections he could support the proposed rules, which address health and safety and are easily enforceable.

Kristina Rice, Deputy Executive Director, Idaho Head Start Association, addressed concerns which stem from personal experience as she has a child with developmental disabilities. Ms. Rice stated she felt education is a major component of developmental disabilities services and that children learn the most from experts in DDA's. Ms. Rice stated she has had experience with children having complications and/or multiple issues due to their disability and lack of maturity to understand, and feels that what is being proposed is quite gentle in terms of required credentials. If DDA's had people with better credentials the number of hours of service children receive would be reduced and cost would also be reduced. Ms. Rice stated she was surprised to learn that multiple agencies hold multiple licenses in various regions. Also, that she was aware of a worker who took a two year old out on her personal errands; the child needed to work on her educational skills, not her social skills. Unfortunately, this particular agency mandated going out in the community as part of its program whether it was appropriate or not. Better oversight and stricter requirements need to be enforced.

Ron Enright, Idaho Council on Developmental Disabilities (ICDD), testified in support of the rules as written. Mr. Enright stated the ICDD is an advocacy organization that advocates on behalf of persons with developmental disabilities. He stated his testimony today deals more with the process which took place and his participation. Mr. Enright reported he attended three meetings, received and reviewed all meeting e-mail updates, and it was his opinion that meetings went well. He stated that there was good participation from the stakeholders and the end product for public review was good. Mr. Enright attended the public hearing in Boise and was surprised to hear a person testify that there was very little time to get feedback on the rules especially since the process took place over a 14 month period. From his observation, there was more than ample time; he believes the process was good and the product is good. In closing, Mr. Enright stated he supported the rules as written.

Chairman Kenyon stated he was quite reluctant to throw out 14 months' worth of hard work; he directed Department staff and stakeholders to work hard on resolving, as much as possible, the major concerns expressed by amending the docket, if appropriate. Chairman Kenyon requested all interested parties adjourn to a different conference room to address the concerns expressed related to Section 700 and 701 and to return with recommendations/amendments to the rule so the rules can be adopted today.

After approximately 15 minutes of discussions, the interested parties returned and Ken Deibert reported staff and providers had an opportunity to review the key areas that Mr. Keele brought before the Board and have agreed the following language be added to Subsection 701.05.b in order to clarify the exception for physician's, or other practitioners of the healing arts, signature on an individual program plan for a person receiving services under Section 700. **The following**

**language will be added to the end of Subsection 701.05.b “....except as provided under Subsection 700.02.b.ii. of the rules.”**

Mr. Deibert also reported Dave Simnitt, Alternative Care Coordinator, Medicaid, provided clarity about the issues around the process that Medicaid is required to follow prior to changes in rule being made (as it relates to supportive counseling). The Department and Association are in agreement that all parties have to wait for approval from the Center for Medicare and Medicaid Services (CMMS) before moving forward with changes. It would be appropriate to place something in temporary rules, which coincide with activities/approvals from federal partners. The rules will be amended with the recommended language to Subsection 7001.05.b, and Department staff and stakeholders will continue to work to add supportive counseling to the rules with the approval from CMMS.

**Motion:** Stephen Weeg moved that the Idaho Board of Health and Welfare adopt as pending, the rules Governing Developmental Disabilities Agencies, as presented in the final proposal under Docket No. 16-0411-0502 with the modifications of the rule to Section 701.05.b as noted above, with the rules becoming final and effective at the conclusion of the 2006 legislative session.

**Second:** Dr. Roberge

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #21: RULES GOVERNING CONTESTED CASE PROCEEDINGS AND DECLARATORY RULINGS - DOCKET NO. 16-0503-0501 (PENDING)**

Bill Walker, Deputy Director, reported that after several years of use, the Department’s contested case rules can benefit from minor changes. Implementing the rule changes will reduce the number of appeals that need to be reviewed, saving both time and money. Pertinent sections of this chapter are being published in order to conform to the Department’s policy of using “must” instead of “shall.” Three sections of this rule will be revised to clarify the following issues: when an appeal is to be filed; that the hearing officer must dismiss an untimely appeal; and that a proposed order of default must be issued if someone fails to appear for a hearing, allowing 14 days to show just cause to the hearing officer as to why the hearing was missed.

Mr. Walker also reported that two additional changes were made based on comments to the rule. The first change will protect the integrity of both this rule and IDAPA 16.02.19, Food Safety and Sanitation Standards for Food Establishments, by deleting the current information regarding appeals for food establishments in these rules and replacing that with a cross reference to the appeals process in the Food and Safety and Sanitation Standards for Food Establishments rule. The second change will add consistency to the rule by changing the term “the appellant” to the “that party” in the Default section.

**Motion:** Stephen Weeg moved that the Idaho Board of Health and Welfare adopt as pending, the rules Governing Contested Case Proceedings and Declaratory Rulings, as presented in the final proposal under Docket No. 16-0503-



0501, with the rules becoming final and effective at the conclusion of the 2006 legislative session.  
**Second:** Dan Fuchs

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #22: RULES GOVERNING FAMILY AND CHILDREN’S SERVICES -**  
**DOCKET NO. 16-0601-0501 (PENDING)**

Ken Deibert, Administrator, Division of Family and Community Services, and Chuck Halligan, Program Manager, Children’s Mental Health, reported the proposed rule changes will help prevent an adoptive family from inadvertently, and without notice, losing benefits for which they are eligible. Specifically, the proposed change deletes language stating that adoption assistance benefits, whether funded by title IV-E or state general funds, may be suspended or terminated if the adoptive family fails to complete the annual recertification process. This change will help maintain the stability of the adoption and preserve the incentive of adoption assistance benefits for hard-to-place children, i.e., those with physical disability, mental/emotional needs, special needs children, etc.

Board members posed the following questions: 1) do parents of the adoptive child lose funding eligibility, especially in the case of a special needs child, when that child turns 18 years old; and 2) is there a process that parents go through to reinstate funding? Mr. Halligan responded that adoptive parents are like any other parent – the adoption benefit ends at age 18, and if that child has a disability, the parents may apply for Medicaid support. Also, that adoption assistance is based on the child’s need, not the family’s income, and that payments cannot exceed the foster care rate when that child is adopted.

**Motion:** Dan Fuchs moved that the Idaho Board of Health and Welfare adopt as pending, the rules Governing Family and Children’s Services, as presented in the final proposal under Docket No. 16-0601-0501, with the rules becoming final and effective at the conclusion of the 2006 legislative session.

**Second:** Janet Penfold

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #23: RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING -**  
**DOCKET NO. 16-0602-0501 (PENDING)**

Ken Deibert, Administrator, Division of Family and Community Services, and Chuck Halligan, Program Manager, Children’s Mental Health, reported these pending rules deal with licensing of foster homes, residential treatment facilities, child care agencies, and outdoor therapeutic programs. Recent improvements initiated by the Department in children’s programs have made the current semi-annual licensing visit requirement redundant. The Department can more effectively meet the growing need for foster care and continue to maintain the health, safety, and

welfare of children in care with current staff resources by changing this licensing requirement.

As allowed under statute, the Department proposes to increase the maximum length of time allowed between on-site licensing visits from six months to 12 months for licensed foster homes, licensed children's agencies, licensed children's therapeutic, outdoor programs, and licensed children's residential care facilities. The proposed rule change will free up time for licensing workers to do the critical task of recruiting, training and licensing of new foster families and better respond to the increasing demand for new foster homes. It will also enable licensing workers to meet the annual survey requirement for the agencies they license and dedicate more time to follow-up on those with issues that are operating under corrective actions plans.

Case workers will continue on-site visits to all foster homes at least once every 60 days, which are monitoring visits and are different from those required for licensing. Foster homes, children's agencies, children's therapeutic outdoor programs, and children's residential care facilities with deficiencies will be visited on the schedule required under their plan of correction. This assures safe, quality care for children while making more efficient use of the Department's licensing workers.

**Motion:** Dr. Roberge moved that the Idaho Board of Health and Welfare adopt as pending, the rules Governing Standards for Child Care Licensing, as presented in the final proposal under Docket No. 16-0602-0501, with the rules becoming final and effective at the conclusion of the 2006 legislative session.

**Second:** Dan Fuchs

**Vote:** Motion carried.          5 Ayes          0 Nays          0 Absent

**AGENDA ITEM #24: MINIMUM STANDARDS FOR DUI EVALUATORS –  
DOCKET NO. 16-0608-0501 (PENDING)**

Ken Deibert, Administrator, Division of Family and Community Services, and Pharis Stanger, Program Manager, Substance Abuse, reported that this rulemaking is needed to improve the quality of DUI evaluations performed by qualified professionals licensed by the Department. This will be accomplished by strengthening and clarifying the criteria for initial application and renewal of a license. The rule assures that evaluations performed for those accused of driving under the influence meet the demands of the courts. These rule changes will benefit DUI evaluators by providing clear information on the licensure process, continuing education requirements, and statistical reporting. The safety of Idahoans will be improved if those convicted of driving under the influence are properly assessed and referred to appropriate services.

Also, the section of this chapter of rule that provides a sunset provision for licensure is no longer in effect and will be replaced with new text to reflect current requirements. Sections of this chapter that provide information for obtaining and renewing a DUI evaluator license will be revised to provide clearer information. Also, the qualifications and continuing education

sections will be revised. Required sections not currently included in this chapter will be added. These changes will ensure this rule clearly states the licensure process for DUI evaluators.

**Motion:** Stephen Weeg moved that the Idaho Board of Health and Welfare adopt as pending, the rules Governing Standards for DUI Evaluators, as presented in the final proposal under Docket No. 16-0608-0501, with the rules becoming final and effective at the conclusion of the 2006 legislative session.

**Second:** Dr. Roberge

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**AGENDA ITEM #25: ADJOURNMENT:**

**Motion:** Chairman Kenyon moved to adjourn the meeting at 11:20 am.

**Vote:** Motion carried.      5 Ayes      0 Nays      0 Absent

**Respectfully signed and submitted by:**

---

Quane Kenyon, Chairman, Health and Welfare Board

---

Janet F. Penfold, Secretary, Health and Welfare Board

---

Martha Puett, Executive Assistant and Recorder